Chapter 17.10

ENVIRONMENTALLY CRITICAL AREAS

Sections:

* Editor's Note: Ordinance 2598 § 4 specifies that the "regulations included in this ordinance shall take effect March 13th, 2006..."

17.10.010 Purpose.

The purpose of this chapter is to identify critical areas and to supplement the development requirements contained in the Lynnwood Municipal Code by providing for additional controls as required by the Washington State Growth Management Act and other laws. Wetlands, streams, fish and wildlife priority habitat areas, ~~and~~ geologically hazardous areas, frequently flooded areas, and critical aquifer recharge areas, as defined in LMC 17.10.030, constitute critical areas that are of special concern to the city of Lynnwood. The standards and mechanisms established in this chapter are intended to protect the functions and values of these environmentally critical features for the public benefit, while providing property owners with reasonable use of their property. By regulating development and alterations to critical areas this chapter seeks to:

A. Protect the public health, safety and welfare by preventing adverse impacts of development;

B. Educate the public as to the long-term importance of environmentally critical areas and the responsibilities of the city to protect and preserve the natural environment for future generations;

C. Effectively manage environmentally critical areas by regulating development within and adjacent to them;

D. Mitigate unavoidable impacts to environmentally critical areas by regulating alterations in and adjacent to critical areas;

E. Protect the city's critical areas using best available science;

F. Prevent, to the extent practicable, adverse cumulative impacts to ~~the water quality, wetlands, streams, stream corridors and fish and wildlife habitat~~all critical areas;

G. ~~Improve streams and watercourses, particularly those associated with Scriber Creek and Swamp Creek to a more natural condition wherever possible, and establish reasonable development incentives to encourage such improvement;~~Encourage improvements to all surface water bodies and watercourses;

H. Protect the public, and public resources and facilities from injury, loss of life, property damage or financial losses due to flooding, erosion, landslides, soil subsidence or steep slope failure;

I. Alert appraisers, assessors, owners and potential buyers or lessees to the potential development limitations of environmentally critical areas;

J. ~~Provide~~ Allow the city of Lynnwood to obtain all ~~with~~ information necessary to approve, condition, or deny public or private development proposals;

K. Provide predictability and consistency to the city of Lynnwood's development review process; and

L. Implement the policies of the State Environmental Policy Act, the Growth Management Act, and all city functional plans and policies. (Ord. 2598 § 2, 2005)

17.10.015 General provisions.

A. Abrogation and Greater Restriction. It is not intended that this chapter repeal, abrogate or impair any existing regulation, easements, covenants or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail.

B. Interpretation. The provisions of this chapter shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter.

C. Rule-Making Authority. The director is authorized to adopt written rules and procedures for the implementation of the provisions of this chapter. (Ord. 2598 § 2, 2005)

17.10.020 Applicability.

This chapter establishes regulations for the protection of properties which contain or are adjacent to environmentally critical areas. Environmentally critical areas include those which meet the definitions and requirements of this chapter. The city may inventory critical areas on maps for reference and potential indicator purposes. All critical areas shall be verified by separate studies to indicate the extent of such areas. ~~or sites which are environmentally critical.~~ Development proposals for properties which contain or are adjacent to designated or regulated environmentally critical areas shall comply with the provisions and requirements of this chapter.

A. A permit shall be obtained from the city for any activity which alters or disturbs an environmentally critical area or buffer, including, but not limited to, clearing, grading, draining, filling, dumping of debris, demolition of structures and installation of utilities.

B. ~~Further, a permit~~A permit shall be obtained from the city for any proposed activity adjacent to a critical area.

C. No boundary line adjustments or development permits including subdivisions, short plats, conditional use permits, rezones or variances shall be granted for any lot which contains or is adjacent to an environmentally critical area until approvals as required by this chapter have been granted by the city.

D. A permit shall be considered valid for two years. The director, upon request by the applicant, may extend the validity of such permit for an additional year.

The provisions of this chapter apply to projects proposed by private and public entities. No permit granted pursuant to this chapter shall remove an applicant's obligation to comply in all respects with other federal, State, and local regulations and permit requirements that may be required, including but not limited to the Washington Department of Fish and Wildlife hydraulic project approval (HPA), Army Corps of Engineers Section 404 permits, Ecology Section 401 permits, and National Pollution Discharge Elimination System (NPDES) permits. The applicant is responsible for complying with these requirements, in addition to this chapter. ~~the applicable provisions of any other federal, state, or local law or regulation, including but not limited to the acquisition of any other required permit or approval.~~ (Ord. 2622 § 2, 2006; Ord. 2598 § 2, 2005)

17.10.030 Definitions.

Terms used in this chapter shall have the meaning given to them in this chapter, unless where used the context thereof clearly indicates to the contrary. Words and phrases used herein in the past, present or future tense shall include the past, present and future tenses; and phrases used herein in masculine, feminine or neuter gender shall include the masculine, feminine and neuter genders; and words and phrases used herein in the singular or plural shall include the singular and plural; unless the context shall indicate to the contrary.

A. "Adjacent" means within 200 feet of an environmentally critical area, measured from the edge of the environmentally critical area.

"Adjacent wetland" means the entire area of the wetland under consideration and not just the portion within 200 feet of an environmentally critical area.

"Alteration" means any human-induced action which impacts the conditions of a critical area or buffer. Alterations include but are not limited to increasing buffer; decreasing buffer; averaging buffer; grading; filling; dredging; draining; channelizing; installing a culvert or other crossing structure; cutting of trees; clearing; paving; construction; dumping; and demolition.

"Areas of special flood hazard" means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year.

B. "Best available science" means current scientific information used in the process to designate, protect, or restore critical areas that is derived from a valid scientific process as defined by WAC 365-195-900 through 365-195-925.

"Buffer" means a designated or regulated area ~~adjacent to~~contiguous with an area designated or regulated as a critical area that also maintains the functions and/or structural stability of the critical area. Buffers are typically well vegetated and do not include areas that are separated and functionally isolated from a critical area by a legally established structure or use (for example, areas are separated by a road).

C. "City" means the city of Lynnwood.

"Clearing" means the removal of vegetation or other organic plant materials by physical, mechanical, chemical or other means.

"Compensation" means the replacement, enhancement, or creation of an environmentally critical area or buffer equivalent in functions, values and area to those being altered or destroyed, and includes, but is not limited to the following:.

1. "Creation" means bringing a critical area and associated buffer into existence at a sitein which a critical area and associated buffer did not formerly exist.

2. "Re-establishment" means actions performed to restore processes and functions to an area that was formerly a wetland or other critical area, where the former critical area was lost by past alterations and activities.

3. "Rehabilitation" means improving or repairing processes and functions to an area that is an existing wetland or other critical area that is highly degraded because one or more environmental processes supporting the wetland area have been disrupted.

4. "Enhancement" means actions performed to improve the condition of existing degraded wetlands or other critical areas so that the functions they provide are of a higher quality; enhancement activities usually attempt to change plant communities within existing wetlands from non-native communities to native scrub-shrub or forested communities.

"Creation" means bringing a critical area into ~~existance~~existence at a site in which a critical area did not formerly exist.

"Critical areas" means the following areas:

1. Wetlands;

2. Streams;

3. Fish and wildlife priority habitat;

4. Geologically hazardous areas;

5. Frequently flooded areas;

6. Critical aquifer recharge areas; and ~~and~~

7~~5~~. Any additional areas defined or established as critical areas under the provisions of the Washington State Growth Management Act or the provisions of this chapter.

D. "Department" means the ~~department of~~ P~~p~~ublic W~~w~~orks Department.

"Development proposal site" means the legal boundaries of the parcel or parcels of land for which the applicant has applied to the city for development permits.

"Director" means the ~~d~~Director of P~~p~~ublic ~~w~~Works and/or the ~~d~~Director's designee.

"Drainage facility" means the system of collecting, conveying, treating, and storing surface and stormwater runoff. Drainage facilities shall include but not be limited to all surface and stormwater runoff conveyance and containment

facilities including streams, pipelines, channels, ditches, infiltration facilities, filtration and treatment facilities, retention/detention facilities, and other drainage structures and appurtenances, both natural and manmade.

E. "Enhancement" means an action which increases the functions and values of a critical area or its buffer.

"Erosion hazard areas" means those areas containing soils which, according to the U.S. Soil Conservation Service Soil Survey, have severe to very severe erosion hazard potential.

"Essential habitat" means habitat necessary for the survival of species listed as "threatened" or "endangered" under the Federal Endangered Species Act, species listed as "threatened" or "endangered" by the Washington State Department of Fish and Wildlife, species listed as "candidate" or "species of concern" by the U.S. Fish and Wildlife Service or NOAA Fisheries, and species listed as "sensitive" or "state candidate" by the Washington State Department of Fish and Wildlife.

F. "Functional values" and/or "functions" means the beneficial roles that critical areas and their buffers serve, including but not limited to water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, groundwater recharge and discharge, erosion control, aesthetic values and recreation.

G. "Geologically hazardous areas" means those areas that are naturally susceptible to geologic events such as landslides, seismic activity and severe erosion. Areas shall be designated as geologically hazardous areas consistent with identification criteria in LMC 17.10.110.~~:~~

~~1. Have naturally occurring slopes of 40 percent or more;~~

~~2. Other areas which the city has reason to believe are geologically unstable due to factors such as landslide, seismic or erosion hazard.~~

H. "Hydrologically connected" means a critical area has a surface water connection to another critical area, is within 200 feet of another critical area, or lies within the flood plain of another critical area, and whose hydrology is directly affected by changes in the other critical area.

I. "In-lieu fee program" means a certified program which sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu fee program sponsor, a governmental or non-profit natural resource management entity.

L. "Legally documented" means any legally recorded document, on file with the county, which designates an area on the site as a critical area or buffer.

"Lot coverage" has the meaning as defined in Chapter 21.02 LMC.

M. "Mitigation" means a negotiated action involving the use of one or more of the following:

1. Avoiding impacts altogether by not taking a certain action or parts of an action;

2. Minimizing impacts by limiting the degree of magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

3. Rectifying the impact by repairing, rehabilitating or restoring the affected critical area;

4. Reducing or eliminating the impact over time by preservation or maintenance operations during the life of the development proposal; or

5. Compensating for the impact by replacing, enhancing, or providing substitute critical areas.

"Mitigation bank" means a property that has been protected in perpetuity, and approved by appropriate City, state, and federal agencies expressly for the purpose of providing compensatory mitigation in advance of authorized impacts

through restoration, creation, and/or enhancement of wetlands and, in exceptional circumstances, preservation of adjacent wetlands, wetland buffers, and/or other aquatic resources.

"Monitoring" means evaluating the impacts of development on the biological, hydrologic and geologic elements of natural systems and assessing the performance of required mitigation through the collection and analysis of data by various methods for the purposes of understanding and documenting changes in natural ecosystems and features.

~~N. "Net development area" means the total horizontal area of a project site, less any or all of the following:~~

~~1. Areas within a project site which are required to be dedicated for public rights-of-way, or otherwise set aside for roads;~~

~~2. Areas required by the city of Lynnwood to be dedicated or reserved as separate tracts, which may include, but not be limited to:~~

~~a. Critical areas and their buffers to the extent they are required by this chapter to remain undeveloped;~~

~~b. Areas required for stormwater control facilities other than facilities which are completely underground, including but not limited to retention/detention ponds, biofiltration swales and setbacks from such ponds and swales;~~

~~c. Regional utility corridors;~~

~~d. Other areas, excluding setbacks, required by the city of Lynnwood to remain undeveloped.~~

O. "Ordinary high water mark" means a mark that has been found where the presence and action of waters are common, usual and maintained in an ordinary year, long enough to create a distinction in character between a water body and the abutting upland.

P. "Person" means an individual, firm, partnership, association or corporation, governmental agency, or political subdivision.

"Priority species" means those species of concern due to their population status and their sensitivity to habitat manipulation. Priority species include those which are listed as "threatened" or "endangered" under the Federal Endangered Species Act, species listed as "threatened" or "endangered" by the Washington State Department of Fish and Wildlife, species listed as "candidate" or "species of concern" by the U.S. Fish and Wildlife Service or NOAA Fisheries, species listed as "sensitive" or "state candidate" by the Washington State Department of Fish and Wildlife, or are designated as such by the Priority Habitat and Species Program of the Washington State Department of Fish and Wildlife.

Q. "Qualified professional" means a qualified scientific expert with expertise appropriate to the relevant critical areas as determined by the person's professional credentials and/or certifications, or as determined by the Dd~~d~~irector.

R. "Reasonable use" means a mechanism by which a local jurisdiction may grant relief from code requirements where compliance leaves no reasonable use of the property.~~–~~

"Restoration" means actions to return an environmentally critical area to a state in which its stability, functions and values approach its unaltered state as closely as possible.

"Riparian" means the lands adjacent to and functionally related to a river or stream.

S. "Stream" means an area where surface waters flow sufficiently to produce a defined channel or bed. A defined channel or bed is an area which demonstrates clear evidence of the passage of water and includes but is not limited to bedrock channels, gravel beds, sand and silt beds, and defined channel swales. The channel or bed need not contain water year-round. For the purposes of this chapter, streams shall include both natural channels and manmade channels that were constructed to replace a natural stream. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff devices or other entirely artificial watercourses unless they are used by salmonids or used to convey streams naturally occurring prior to ~~construction~~ development in such watercourses.

W. "Wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency or duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention ~~ponds~~ facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands do include those artificial wetlands intentionally created from non-wetland areas to mitigate conversion of wetlands. (Ord. 2622 § 3, 2006; Ord. 2598 § 2, 2005)

~~**17.10.040 Permitted uses.**~~

~~Uses permitted on properties subject to this chapter shall be the same as those permitted in the zoning district in which the property is located. (Ord. 2598 § 2, 2005)~~

17.10.040~~5~~ Submittal requirements.

A. Critical Areas Permit Application Required. Any application for land use, boundary line adjustments or development proposals by private or public entities, including rezones, subdivisions, building permits, clearing and grading permits, tree permits, or other activities which will result in any alteration or modification within or adjacent to an environmentally critical area or its standard buffer width shall include an application for a critical areas permit. The critical areas permit application shall be submitted to the department of public works for processing as required by LMC 2.44.040. The director or the director's designee shall review the information submitted by the applicant together with any other available information. If the director determines that there is insufficient environmental information to evaluate the proposal, the applicant shall be notified that additional environmental studies are required. The director reserves the right to refuse to accept an incomplete application. The director may waive the requirement for a special study if there is substantial evidence showing that there will be no alteration of the critical area or buffer and that there will be no significant adverse impacts on the critical area as a result of the proposed development. At all times, critical area reports and decisions shall rely on the best available science.

B. Contents of Special Studies. Special environmental studies shall be prepared by a qualified person with expertise in the area of concern in accordance with the requirements of this chapter and to the satisfaction of the department. Special studies are valid for two years; after such date the city will determine if a revision or additional assessment is necessary. Such studies shall:

1. Rely on the best available science; and

2. Provide a site plan and written report describing the conditions of the property, illustrating the proposed development and the environmentally critical area; and

3. Identify and characterize any critical area and associated buffer on or adjacent to the site. Such characterizations shall comply with the methods described and accepted in this chapter; and

4. Describe how the proposed development will impact the critical area(s) and associated buffer(s) which are present on or which are adjacent to the property; and

5. Describe any plans for alteration or modification of the critical area(s) and associated buffer(s), and provide appropriate chapter citations allowing for such alteration or modification; and

~~6. A statement of any plans to utilize buffer credit, and provide a detail of the calculations; and~~

~~7~~6. A statement of the resources and methodology used in the reporting reflecting the use of "best available science"; and

~~7~~8. Provide recommended methods for ~~avoiding or~~ mitigating any identified impacts consistent with mitigation sequencing steps required by LMC 17.10.041.

C. Previous Critical Area Review. Any development proposals which are proposed to occur on sites that~~t~~ ~~previously~~ underwent critical or sensitive areas review and either; a) ~~, and~~ have an established and legally documented critical area buffer;~~,~~ or b) ~~previously underwent critical or sensitive areas review and~~ possess a valid critical or sensitive areas permit issued by a governing municipal agency;~~,~~ shall not be subject to additional critical areas review and requirements, provided:

1. The development proposal would not encroach into the previously established buffer or protection area; and

2. The development proposal will not increase the existing level of impact on the critical area or the buffer. (Ord. 2622 § 4, 2006; Ord. 2598 § 2, 2005)

17.10.041 Mitigation sequencing

Proposed impacts to critical areas and their buffers shall adhere to the mitigation sequencing steps defined in section LMC 17.10.030. Applicants proposing mitigation are required to demonstrate that mitigation sequencing steps have been followed.

17.10.042 Variances.

A. Variances from the standards of this title may be authorized through the process of hearing examiner review in accordance with the procedures set forth in Chapter 21.26 LMC. The hearing examiner shall review the request and make a written finding that the request meets or fails to meet variance decision criteria of this section.

B. Specific Variance Criteria. A variance may be granted if the applicant demonstrates that the requested action conforms to all of the following specific criteria:

1. Such variance is necessary because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property to provide it with use rights and privileges permitted to other properties in the vicinity and in the land use district of the subject property;

2. The special circumstances of the subject property make the strict enforcement of the provisions of this code an unnecessary hardship to the property owner;

3. The special circumstances of the subject property are not the result of the actions of the applicant or a predecessor in interest;

4. The variance requested is the minimum necessary to fulfill the purpose of a variance and the need of the applicant; provided, granting the variance requested will not confer on the applicant any special privilege that is denied by this title to other lands, structures, or buildings under similar circumstances;

5. The granting of the variance is consistent with the general purpose and intent of this title, and will not further degrade the functions or values of the associated critical areas or otherwise be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the subject property; and

6. The decision to grant the variance is based upon the best available science and gives special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish habitat.

C. Hearing Examiner Review. The city hearing examiner shall review variance applications and conduct a public hearing. The hearing examiner shall approve, approve with conditions, or deny variance applications based on a proposal's ability to comply with general and specific variance criteria provided in subsections (A) and (B) of this section.

D. Conditions May Be Required. The Hearing Examiner retains the right to prescribe such conditions and safeguards as are necessary to secure adequate protection of critical areas from adverse impacts, and to ensure conformity with this title for variances granted through hearing examiner review.

E. Time Limit. The Hearing Examiner shall prescribe a time limit within which the action for which the variance is required shall be begun, completed, or both. Failure to begin or complete such action within the established time limit shall void the variance, unless the applicant files an application for an extension of time before the expiration.

F. Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of a variance application and upon which any decision has to be made on the application.

17.10.0436 Exemptions ~~allowed~~criteria.

Certain activities set forth in LMC 17.10.0447 are exempt from the requirements of this chapter. The director may exempt such activities, as well as others, provided:

A. No person shall conduct any activity within or adjacent to any critical area or critical area buffer that is exempt from the provisions of this chapter until such ~~time as such~~ person has given 10 days advance written notice (~~except~~ unless for an emergency per LMC 17.10.0447(A)) to the director. The notice shall identify the activity to be conducted and the exemption(s) relied upon by the person who intends to conduct such activity; and

B. Such exemptions shall be verified by ~~city staff~~the Director and acknowledged ~~on the face of~~in ~~the~~ a written notice prior to the commencement of the activity; and

C. Impacts are avoided to the maximum extent feasible; and

D. Any~~If~~ ~~absolutely~~ unavoidable~~,~~ impacts to critical areas and their buffers are minimized; and

D. Impacted areas are immediately restored. (Ord. 2598 § 2, 2005)

17.10.0447 Exemptions.

Subject to the conditions and requirements of LMC 17.10.0436, the following situations are exempt from the operation of this chapter:

A. Emergency actions necessary to prevent an immediate threat to public health, safety or welfare, or that pose an immediate risk of damage to private or public property, and that require action in a timeframe too short to allow for normal processing of the requirements of this chapter.

After the emergency action is taken, the director shall be notified of these actions within ~~seven days.~~ 48-hours. The director may require the person or agency relying on this exemption to then restore and/or mitigate for any impacts to critical areas and or buffers in accordance with an approved critical areas study and/or mitigation plan.

B. All existing developed areas located within critical areas or their associated buffers have a legal nonconforming status as to use and setback requirements.

C. Existing structures, facilities, landscaping or other improvements that because of their existing location do not meet the setback requirements of this chapter, may be remodeled, reconstructed or replaced, or maintained or repaired, providing that any such activity does not further intrude or encroach into a critical area or buffer, ~~increase the building footprint more than 10 percent,~~ or adversely affect critical area functions. Maintenance and repair does not include any modification that increases the amount of impervious surface, and does not include construction of an additional access road. Nothing herein releases the site from compliance with the provisions of LMC Title 21.

D. Normal and routine maintenance of existing drainage ditches that do not meet the criteria for being considered a fish and wildlife priority habitat area, drainage retention/detention facilities, or ornamental landscape ponds; provided, that none of these are part of a critical area mitigation plan required by this chapter.

E. Relocation of electric facilities, lines, equipment, or appurtenances, not including substations, with an associated voltage of 55,000 volts or less, and relocation of natural gas, cable communications, telephone facilities, and water ~~or~~ sewer or storm lines, pipes, mains, equipment or appurtenances, only when required and approved by the city, and subject to the following:

1. No practical alternative location is available; and

2. The applicant demonstrates such construction is necessary for gravity flow (if applicable); and

3. Construction is accomplished using best management practices; and

4. The ~~wetland~~ critical area and buffer environment is protected to the maximum extent possible during construction and maintenance; and

5. The original grade is replaced; and

6. Joint use of a utility corridor by other utilities may be allowed and is strongly encouraged.

F. Installation, construction, replacement, repair, operation or alteration of electric facilities, lines equipment or appurtenances (not including substations) with an associated voltage of 55,000 volts or less in ~~improved city road~~ publicly owned right-of-way (which may be within or adjacent to a critical area or its buffer), subject to full review and approval of the director, including any mitigation and restoration requirements established by the Director.

G. Installation, construction, replacement, repair, operation or alteration of natural gas, cable and telecommunication facilities, water ~~or~~ sewer or storm lines, pipes, mains, equipment or appurtenances in ~~improved City road~~publicly owned ~~–~~right-of-way (which may be within or adjacent to a critical area or its buffer), subject to full review and approval of the director, including any mitigation and restoration requirements established by the Director.

H. Repair or overlay of improved ~~city road right-of-way~~public road and trail surfaces, which may be within or adjacent to a critical area or its buffer, so long as it does not further encroach into the critical area or its buffer.

I. Minor site investigation work necessary for land use submittals, such as surveys, delineations, soil logs, percolation tests, and other related activities where such activities do not require construction of new access roads or significant amounts of excavation or vegetation removal. In every case, impacts to critical areas and buffers shall be minimized and disturbed areas shall be immediately restored.

J. Removal of the following non-native vegetation with hand labor from critical areas and buffers provided that appropriate erosion-control measures are used, and the area is revegetated with native vegetation. This exemption does not apply to mechanical removal.~~:~~

1. Himalayan blackberry (Rubus discolor, R. armeniacus, R. procerus);

2. Evergreen blackberry (R. laciniatus);

3. English ivy (Hedera helix);

4. Japanese knotweed (Polygonum cuspidatum);

5. Any plant identified as noxious on the Washington State Noxious Weed List.

~~Mechanical equipment may be used for removal of the above listed vegetation, subject to prior director approval by the director.~~

K. Isolated Category III and IV wetlands under 2,500 square feet which have ~~80 percent or greater areal~~majority cover by invasive species, and have been determined by a qualified professional to be of low function, may be exempted from the requirements of this chapter, provided that action is taken to mitigate for the lost functions. Adequate and appropriate mitigation measures shall be submitted by the applicant, prepared by a qualified professional, subject to

the approval of the director, and may include, but is not limited to, stormwater quality and quantity treatment, and/or native landscaping enhancements. Please note that state and federal permits may still apply. (Ord. 2598 § 2, 2005)

17.10.045 Allowed low impact uses and activities

Certain low impact uses and activities may be approved by the director consistent with this section. These uses must be mitigated for according to the applicable terms and conditions detailed in this chapter. The following are allowed low-impact uses and activities:

A. Conservation and restoration activities that intend to protect the soil, water, vegetation, or wildlife.

B. Passive recreation and educational facilities within stream buffers and wetland buffers, including permeable walkways, trails, and viewing platforms.

C. Educational and scientific research activities.

D. Normal and routine maintenance and repair of any existing public or private facilities.

E. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland by changing existing topography, water conditions, or water sources.

F. Enhancement of a wetland buffer through the removal of non-native invasive plant species, and planting beneficial native species. Removal of invasive plant species shall be restricted to hand removal.

17.10.046~~8~~ Reasonable use exception ~~– Allowed.~~

If the application of this chapter would deny all reasonable economic use of the subject property, the applicant may apply for a reasonable use exception pursuant to the following provisions:~~If the application of this chapter would deny all reasonable use of the property, development may be allowed which is consistent with the general purpose of the chapter and the public interest, provided:~~

A. An application for a reasonable use exception containing the elements required in LMC 17.10.046~~8~~97 shall be filed with the department and shall be considered by the hearing examiner at a public hearing under Process I (LMC 1.35.100 through 1.35.180).

B. The hearing examiner must determine that:

1. Application of this chapter would deny all reasonable use of the property; and

2. There is no reasonable use with less impact on the critical area; and

3. The proposed development does not pose an unreasonable threat to the public health, safety or welfare; and

4. Any alteration to the critical areas or buffers must be the minimum necessary to allow for the reasonable use of the property; and

5. Impacts to critical areas and buffers are mitigated consistent with the purpose and standards of this chapter to the greatest extent feasible; and

6. The inability of the applicant to derive reasonable use of the property is not the result of actions of the property owner or some predecessor, which thereby created the condition after March 13, 2006.

C. The burden of proof shall be on the applicant to bring forth substantial evidence in support of the application for the hearing examiner in support of a decision on the application.

D. If the hearing examiner grants a reasonable use exception, the examiner may impose any condition(s) to ensure that the development is consistent with the intent of this chapter. (Ord. 2622 § 5, 2006; Ord. 2598 § 2, 2005)

17.10.04~~49~~ Reasonable use application and process.

Whenever an applicant requests a reasonable use exception, the applicant shall submit a complete application to the director for review. The applicant is strongly encouraged to schedule a submittal appointment with the department when submitting the application. This meeting will ensure that the applicant has a complete application, containing all of the elements required by this section. The department may refuse to accept an incomplete application.

The director shall prepare a recommendation to the hearing examiner based on review of the submitted information.

The reasonable use application shall include the following information, which will be used to evaluate whether a reasonable use exception shall be allowed:

A. A complete application and special study, as required by LMC 17.10.04~~05~~; and

B. A map and narrative describing the development proposal, and proposed impacts and reductions being requested; and~~.~~

C. A mitigation plan specifying the measures taken to mitigate for the impacts; and

~~C~~D. A map showing the ~~amount of the lot which is within~~other setbacks required by other standards of the zoning code and any modification to those standards being requested; and

E~~D~~. An analysis of the impact that the proposed development would have on the environmentally critical area(s) and/or their buffer(s); and

F~~E~~. A design of the proposal so that the amount of development proposed as "reasonable use" will have the least impact practicable on the environmentally critical area(s), including a narrative as to why the applicant believes this is so; and

G~~F~~. A description of the design modifications proposed by the applicant in order to minimize impacts on the critical area(s) and buffer(s). This includes, but is not limited to, a description of the modified building footprint, reduced building setback from the buffer, parking modifications, reduced total building square feet, modified location to preserve trees, and any other measures taken by the applicant; and

G. A description of the needed modifications to the standards of all applicable chapters to accommodate the proposed development, including chapter citations; and

H. Any other related projects documents, such as permit applications to other agencies, special studies, and environmental documents prepared ~~pusuant~~pursuant to the State Environmental Policy Act; and

I. Such other information as the director or hearing examiner determines is reasonably necessary to evaluate the issue of reasonable economic use as it relates to the proposed development. (Ord. 2622 § 6, 2006; Ord. 2598 § 2, 2005)

17.10.05~~50~~ Wetland delineation and rating system.

A. Wetlands shall be identified and delineated in accordance with the approved federal wetland delineation manual and applicable regional supplements as ~~the methodologies~~ detailed in the WAC 173-22-~~080~~035.

B. Wetland delineations are valid for three years, after such date the city will determine if a revision or additional assessment is necessary.

C. The wetland boundaries established by this process shall be used to meet the requirements of this chapter.

D. The total area of wetlands shall be used for the purpose of classification regardless of whether a proposed development site includes all or only a portion of the wetland.

E. Wetlands shall be categorized using the Department of Ecology's ~~2004~~ 2014 Washington State Wetland Rating System for Western Washington as detailed in the WAC 365-190-090. (Ord. 2598 § 2, 2005)

17.10.051 Wetland report - Requirements

A. Critical areas report requirements for wetlands may be met in "stages" or through multiple reports. The typical sequence of potentially required reports that may in part or in combination fulfill the requirements of this section include:

1. Wetland reconnaissance report documenting the existence and general location of wetlands in the vicinity of a project area;

2. Wetland delineation report documenting the extent and boundary of a jurisdictional wetland per RCW 36.70A.175; and

3. Wetland mitigation report documenting potential wetland impacts and mitigation measures designed to retain or increase the functions and values of a wetland.

B. A wetland critical areas report may include one or more of the above three report types, depending on the information required by the director and the extent of potential wetland impacts. The Director maintains the authority and discretion to determine which report(s) alone or combined are sufficient to meet the requirements outlined below and to waive report requirements based upon site conditions and the potential for project impacts.

C. Preparation by a Qualified Professional. A critical area report for wetlands shall be prepared by a qualified professional who is a certified professional wetland scientist or a noncertified professional wetland scientist with a minimum of five years of experience in the field of wetland science and with experience preparing wetland reports.

D. Area Addressed in Critical Area Report. The following areas shall be addressed in a critical area report for wetlands:

1. The project area of the proposed activity;

2. All wetlands and recommended buffers within 20025 feet of the project area; and

3. All shoreline areas, water features, floodplains, and other critical areas, and related buffers within 22500 feet of the project area. The location and extent of wetlands and other critical areas existing outside of the project area or subject parcel boundary may be shown in approximation as practical and necessary to provide an assessment of potential project effects.

F. Wetland Analysis. In addition to the minimum required contents of LMC 17.10.040, Submittal requirements, a critical areas report for wetlands shall contain an analysis of the wetlands, including the following site- and proposal-related information at a minimum:

1. A written assessment and accompanying maps of the wetlands and buffers within the project area as well as a 22500 foot area surrounding the project area, including the following information at a minimum:

a. Wetland delineation and required buffers; and

b. Existing wetland acreage; and

c. Wetland category; and

d. Vegetative, faunal, and hydrologic characteristics; and

e. Soil and substrate conditions; and

~~f. A discussion of watershed context and landscape position for wetland areas; and~~

gf. A discussion of the water sources supplying the wetland and documentation of hydrologic regime (locations and discussion of contributing upstream water sources both within the project area and outside of the project area, discussion of downstream features that could be impacted by changes to wetland hydrologic regime, locations of inlet and outlet features, water depths throughout the wetland, evidence of water depths

throughout the year: drift lines, algal layers, moss lines, and sediment deposits, and evidence of recharge or discharge).

g. A description of the proposed stormwater management plan for the development and consideration of impacts to drainage alterations.

The location, extent and analyses of wetlands not contiguous with the subject parcel existing outside of the immediate project area may be described in approximation as practical and necessary to provide an assessment of potential project effects and hydrologic/ecological connectivity to on-site wetlands and other critical areas.

2. A discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing wetlands and restore any wetlands that were degraded prior to the current proposed land use activity.

3. A habitat and native vegetation conservation strategy that addresses methods to protect and enhance on-site habitat and wetland functions.

4. Functional evaluation for the wetland and adjacent buffer using a local or state agency staff-recognized method and including the reference of the method and all data sheets.

5. Proposed mitigation, if needed, including a written assessment and accompanying scale maps / drawings of the impacts and mitigation site and adjacent areas consistent with LMC 17.10.055. ~~.~~

17.10.05~~21~~ Standard wetland buffers.

~~Wetland buffer widths will be established using three factors: the wetland category; the intensity of impacts; and the functions or special characteristics of the wetland that need to be protected, as determined through the rating system.~~ Any wetland relocated or replaced because of wetland alterations shall have at least the standard buffer width identified in ~~The standard buffer widths~~ the table below. Standard buffer widths have been established in accordance with best available science based on wetland category and habitat scores; they shall be as follows:~~shall be as follows:~~

Wetland Category	Minimum Buffer Width (Wetland scores 3-4 habitat points)	Buffer Width (Wetland scores 5 habitat points)	Buffer Width (Wetland scores 6-7 habitat points)	Buffer Width (Wetland scores 8-9 habitat points)
Category I: Based on total score	75 ft	105 ft	165 ft	225 ft
Category I: Bogs and Wetlands of High Conservation Value	190 ft	190 ft	190 ft	225 ft
Category I: Forested	75ft	105 ft	165 ft	225 ft
Category II (all)	75 ft	105 ft	165 ft	225 ft
Category III (all)	60 ft	105 ft	165 ft	225 ft
Category IV (all)	40 ft	40 ft	40 ft	40 ft

~~Buffer Width~~

	~~Buffer Width~~
~~Category I~~	~~110'~~
~~Category II~~	~~110'~~
~~Category III~~	~~75'~~
~~Category IV~~	~~40'~~

Measures to minimize the impacts of the land use adjacent to the wetlands shall be applied: ~~. These measures must be agreed upon by the director, and the maximum number of such measures must be used~~. ~~Examples of such measures may be found in the Washington Department of Ecology's manual on protecting and managing wetlands, and/or may be suggested by a qualified professional.~~

Disturbance	Required Measures to Minimize Impacts
Lights	• Direct lights away from wetland
Noise	• Locate activity that generates noise away from wetland • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source • immediately adjacent to the out wetland buffer
Toxic runoff	• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 feet of wetlands • Apply integrated pest management
Stormwater runoff	• Retrofit stormwater detention and treatment for roads and existing adjacent development • Prevent channelized flow from lawns that directly enters the buffer • Use Low Impact Development techniques (per PSAT publication on LID techniques)
Change in water regime	• Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	• Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion • Place wetland and its buffer in a separate tract or protect with a conservation easement
Dust	• Use best management practices to control dust
Disruption of corridors or connections	• Maintain connections to offsite areas that are undisturbed • Restore corridors or connections to offsite habitats by replanting

~~These buffer widths may be increased if the wetland scores highly for habitat. The criteria and distances for such increased buffer widths are identified in LMC 17.10.056.~~

~~These buffer widths may be reduced to the decreased buffer widths identified in LMC 17.10.057, but nothing less, under the following conditions:~~

~~A. There is a corridor of undisturbed native vegetation at least 100 feet wide between the wetland and any adjacent essential habitat.~~

~~B. Measures to minimize the impacts of the land use adjacent to the wetlands are applied. These measures must be agreed upon by the director, and the maximum number of such measures must be used. Examples of such measures may be found in the Washington Department of Ecology's manual on protecting and managing wetlands, and/or suggested by a qualified professional.~~

~~C. Any wetland restored, relocated, replaced or enhanced because of wetland alterations shall not be eligible for decreased buffer widths. (Ord. 2622 § 7, 2006; Ord. 2598 § 2, 2005)~~

17.10.053~~2~~ Alterations to wetlands and buffers ~~— Allowed.~~

Alteration, modification, or enhancement of wetlands and buffers may be allowed by this chapter, subject to the review and approval by the director. The applicant shall submit to the department a plan detailing the alteration, modification and/or enhancement proposal, along with any proposed mitigation. This plan shall be prepared by a qualified professional. The plans shall meet the criteria of LMC 17.10.054~~3~~, 17.10.055~~4~~, 17.10.056~~5~~, 17.10.12011~~,~~ and 17.10.1302~~5~~ (as applicable).

All wetlands and buffers, regardless of category, shall be preserved unless the applicant can demonstrate the following:

A. There is no feasible and reasonable alternative to making the alteration; and

B. Alteration will preserve, improve, or protect the functions of the wetland system including water quality, stormwater detention capabilities, and fish and wildlife habitat; and

C. The mitigation for such alteration has a high probability of success. (Ord. 2598 § 2, 2005)

17.10.054~~3~~ Wetland and buffer alteration criteria.

A. Alteration Criteria. Wetland and buffer alteration allowed by this chapter shall be subject to the following requirements:

~~1. Measures to minimize the impacts of the land use adjacent to the wetlands are applied. These measures must be agreed upon by the director, and the maximum number of such measures must be used. Examples of such measures may be found in the Washington Department of Ecology's manual on protecting and managing wetlands, and/or suggested by a qualified professional; and~~

1~~2~~. Each activity or use shall be designed so as to minimize overall wetland and buffer alteration to the greatest extent reasonably possible; and

2~~3~~. Construction techniques shall be approved by the city prior to any site work; and

3~~4~~. A mitigation plan shall be approved by the city prior to the issuance of any construction permits; and

4~~5~~. Compensatory wetland mitigation~~Relocated wetlands~~ shall be within the same drainage ~~sub-basin~~area (as defined within the city's comprehensive flood and drainage management plan) or within the service area of a certified in-lieu fee program or mitigation bank; and

5~~6~~. All mitigation work shall be timed prior to or concurrent with the proposed alterations; and

6~~7~~. When adding to an existing wetland as a result of compensation for wetland losses, the characteristics of the existing wetland shall be maintained.

B. Time for Completion.

1. When alteration is allowed, the city may require that the relocated or compensatory wetland and buffer be completed and functioning prior to allowing the existing wetland to be filled or altered.

2. Mitigation shall be completed prior to granting of temporary or final occupancy, or the completion or final approval of any development activity for which mitigation measures have been required.

3. If the mitigation work is not completed within three years of the city approval of the mitigation plan, the city may require that a reevaluation of the plan be conducted by a qualified wetland professional. The city may require additional requirements based on the recommendations. (Ord. 2622 § 8, 2006; Ord. 2598 § 2, 2005)

17.10.0554 Wetland and buffer mitigation plan.

A mitigation plan shall be approved by the city prior to the issuance of any permits for development activity occurring on a lot upon which wetland and/or buffer alteration, reduction, averaging, restoration, creation or enhancement is allowed. The mitigation plan shall:

A. Be prepared by a qualified wetland professional using best available science and the following Washington Department of Ecology accepted guidance: Wetland Mitigation in Washington State—Part 2: Developing Mitigation Plans (Ecology, 2006); and Selecting Wetland Mitigation Sites Using a Watershed Approach (Ecology, 2009) ~~Washington Department of Ecology accepted methodologies~~; and

B. Include a baseline study that quantifies the existing functional values and the relationship to the watershed and existing hydrologically connected waterbodies; and

C. Include baseline information of surface and subsurface hydrologic conditions, and include an analysis of future hydrologic regime changes from proposed development and proposed hydrologic regime for enhanced, created, or restored wetland~~s~~ mitigation areas; and

~~C~~D. Specify how functional values will be replaced and when mitigation will occur relative to project construction; and

~~D~~E. Include provisions for adequate monitoring to ensure success of the mitigation plan. The monitoring plan shall outline the approach for monitoring construction of the mitigation project, and for assessment of the completed project, and shall include a monitoring schedule. A monitoring report shall be submitted annually for a period up to five years to the department unless a more frequent time period is required as a condition of the permit, or a longer period is required by an outside agency. The monitoring report ~~and~~ shall document successes, problems and contingency actions of the mitigation project. Monitoring activities may include, but are not limited to:

1. Establishing vegetation monitoring plots to track changes in plant species composition and density over time; and

2. Measuring base flow rates and stormwater runoff to model and evaluate hydrologic predictions; and

3. Sampling fish and wildlife populations to determine habitat utilization, species abundance and diversity; and

4. Sampling surface and subsurface waters to determine pollutant loading, and changes from the natural variability of background conditions.

~~E~~F. Include a contingency plan specifying what corrective actions will be taken should the mitigation not be successful; and

~~F~~G. Include provisions for an assurance device, which may include a bond, to assure that work is completed in accordance with the mitigation plan, and to assure that restoration or rehabilitation is performed in accordance with the contingency plan if mitigation fails within five years of implementation. (Ord. 2598 § 2, 2005)

17.10.05~~6~~5 Wetland alteration compensation.

As a condition of approving the alteration or relocation of a wetland (or portion of wetland), the city shall require that an area equal to or larger than the altered portion of the wetland be provided as compensation for wetland impacts, so that there is no net loss of wetlands. All wetlands which are created as mitigation for filling shall be relocated either within the same drainage ~~area, as~~areas defined by the city's comprehensive flood and drainage management plan, or using mitigation banks and in-lieu fee programs. Mitigation banks and in-lieu fee programs are preferred as compensation for wetland impacts over permittee-responsible mitigation if the wetland alteration falls within the service area of an existing mitigation bank of in-lieu fee program. In the case of permittee responsible mitigation, mitigation actions are preferred to follow this order: restoration, creation, and enhancement.

~~.~~ The ~~following~~ ratios listed in the table below apply to ~~-~~creation ~~-~~or re-establishment, rehabilitation only, or enhancement only ~~or restoration~~ of the altered or relocated wetlands. The first number specifies the acreage of replacement wetlands required, and the second number specifies the acreage of wetlands altered or relocated.

Category and Type of Wetland	***Creation or Re-establishment***	***Rehabilitation only***	***Enhancement only***
Category IV	1.5:1	3:1	6:1
Category III	2:1	4:1	8:1
Category II	3:1	6:1	12:1
Category I: Based on functions	4:1	8:1	16:1
Category I: Mature and old growth forest	6:1	12:1	24:1
Category I: High conservation value / Bog	Not considered possible	Not considered possible	Not considered possible

~~A. Category I: 6:1~~

~~B. Category II: 3:1~~

~~C. Category III: 2:1~~

~~D. Category IV: 1.5:1~~

~~E.~~ The city may increase the ratios under the following circumstances:

1. Uncertainty as to the probable success of the proposed restoration or creation;

2. Significant period of time between destruction and replication of wetland values;

3. Projected losses in functional value;

4. The compensatory mitigation ~~relocation~~ is off-site. (Ord. 2622 § 9, 2006; Ord. 2598 § 2, 2005)

17.10.05~~7~~6 Increased wetland buffer width.

~~Wetland buffer widths may be increased if the wetland provides high quality habitat. The requirement to increase buffer widths shall be supported by the adopted wetland rating system, which shall demonstrate that the wetland scores highly for habitat. The wetland buffers shall be increased according to the following table:~~

	~~Habitat Score~~	~~Buffer Width~~
~~Category I~~	~~29 – 36~~	~~225'~~
~~Category II~~	~~29 – 36~~	~~225'~~
~~Category III~~	~~20 – 28~~	~~110'~~
~~Category IV~~	~~> 20~~	~~50'~~

~~These buffer widths may be reduced to the standard width identified in LMC 17.10.051, but nothing less, under the following conditions:~~

~~A. There is a corridor of undisturbed native vegetation at least 100 feet wide between the wetland and any other essential habitat.~~

~~B. Measures to minimize the impacts of the land use adjacent to the wetlands are applied. These measures must be agreed upon by the director, and the maximum number of such measures must be used. Examples of such measures may be found in the Washington Department of Ecology's manual on protecting and managing wetlands, and/or suggested by a qualified professional.~~ The director has the authority to increase a wetland buffer width up to 50% if the wetland contains a threatened or endangered species or the buffer or adjacent uplands has a slope greater than fifteen percent (15%) or is susceptible to erosion and standard erosion-control measures will not prevent adverse impacts to the wetland ~~surrounding land is susceptible to severe erosion and/or steep slopes~~and a larger buffer is needed to protect these critical areas. (Ord. 2598 § 2, 2005)

~~17.10.057 Decreased wetland buffer width.~~

~~Any wetland restored, relocated, replaced or enhanced because of wetland alterations shall have at least the standard buffer width identified in LMC 17.10.051.~~

~~Buffer widths may be reduced to the following widths if the conditions allowing reduced buffer widths established in LMC 17.10.051 are met.~~

~~Additionally, wetland buffer width may be decreased from the standard width established in LMC 17.10.051 if the wetland has poor habitat. These values shall be supported by the wetland rating system adopted in LMC 17.10.050, which shall demonstrate that the wetland scores poorly for habitat. The wetland buffers may be decreased according to the following table:~~

	Habitat Score	Buffer Width
Category I	< 20	75'
Category II	< 20	75'
Category III	< 10	50'
Category IV	< 10	25'

(Ord. 2598 § 2, 2005)

17.10.0588 Averaging of wetland buffer widths.

Wetland buffer widths may be modified by averaging buffer widths. Buffer width averaging will be allowed only where the applicant can demonstrate that:

A. The total area contained within the wetland buffer after averaging is not less than that contained within the approved buffer prior to averaging; and

B. Averaging is necessary to avoid an extraordinary hardship to the applicant caused byas a result of circumstances peculiar to the property; and

C. The averaged buffer, at its narrowest point, shall not result in a width no less than seventy-five percent (75%)three fourths of the standardapproved buffer width allowed for that proposal; and

D. A mitigation and enhancement plan is prepared for the proposed alteration.; and

17.10.059 Buffer width reductions through enhancement

At the discretion of the director, and only when buffer averaging cannot be accomplished on sitewould not provide adequate design flexibility, wetland buffer width reductions (or approval of standard buffer widths for wetlands where existing buffer conditions require increased buffer widths) may be granted concomitant to the development and implementation of a wetland buffer enhancement plan for Category III and IV wetlands only. Approval of a wetland buffer reduction with enhancement proposallan shall, be limited to a at the discretion of the director, allow for wetland buffer width reductions of to not less than seventy-five percent (75%) of the approvedstandard buffer width; provided that:

aA. The plan provides evidence that wetland functions and values will be:

i1. Increased or retained through plan implementation for those wetlands where existing buffer vegetation is generally intact; or

ii2. Increased through plan implemantation for those wetlands where existing buffer vegetation is inadequate to protect the functions and values of the wetland;

Be. The plan requires monitoring and maintenance to ensure success in accordance with LMC 17.10.055; and

Cd. The plan specifically documents methodology and provides performance standards for assessing increases in wetland buffer functioning as related to:

i1. Water quality protection;

2ii. Provision ofMaintenance and/or improvements to wildlife habitat;

3~~iii~~. Maintenance of wetland hydrology; and

4~~iv~~. Restricting wetland intrusion and disturbance.

17.10.06059 Building setback lines – Wetlands.

A building setback line of 15 feet shall be required from the edge of any wetland buffer. Following construction, this helps to prevent encroachment into the buffer while maintaining such structures. The setback shall be identified on the site plan approved by the city. Fences and minor structural intrusions as defined in LMC 21.02.105 into the area may be allowed if the department determines that such intrusions will not negatively impact the wetland. ~~The setback shall be identified on the site plan approved by the city. In addition to these allowances, the following may also be allowed in the building setback area:~~

~~A. Landscaping;~~

~~B. Uncovered decks;~~

~~C. Building overhangs, if such overhangs do not extend more than 30 inches into the setback area; and~~

~~D. Impervious ground surfaces, such as driveways and patios; provided that such improvements may be subject to water quality regulations as adopted in the current editions of the International Residential Code and International Building Code, as adopted in LMC Chapter 16.~~ ~~((~~Ord. 2598 § 2, 2005)

17.10.0670 Stream – ~~Rating~~Typing.

Streams within the city shall ~~receive a rating according to the following categories~~be classified according to the following stream typing system, as established by the Washington State Administrative Code (WAC) 222-16-030:

A. Type S. Type S represents any waters that are considered "Shorelines of the State".

B. Type F. Type F represents all waters (perennial or seasonal) that are known to be used by fish or contain fish habitat as defined by Department of Natural Resources criteria. This~~It~~ includes Scrib~~n~~er Creek, Swamp Creek, Lund's Creek, and Halls Creek.

C. Type Np. Type Np represents perennial waters that do not contain fish or fish habitat.

D. Type Ns. Type Ns represents intermittent waters that do not contain fish or fish habitat and have intermittent flows. It does include stream reaches located downstream from any Type Np water.

~~A. Category I. The following streams are classified as Category I: Scriber Creek, Swamp Creek, Lunds Creek and Halls Creek.~~

~~B. Category II. Category II streams are streams other than Category I streams and that flow year-round during years of normal rainfall or those streams that are used by salmonids.~~

~~C. Category III. Category III streams are those streams that are naturally intermittent or ephemeral during years of normal rainfall and are not used by salmonids. (Ord. 2598 § 2, 2005)~~

17.10.0671 Stream buffers.

Stream buffers shall be required for all regulated activities adjacent to regulated streams. Any stream which is ~~restored,~~ relocated ~~,~~or replaced ~~or enhanced~~ because of stream alterations shall have at least the standard buffer width required for the class of stream involved, unless the alteration is a beneficial restoration project allowed under 17.10.073. All stream buffers shall be measured from the ~~top of the upper bank or, if that cannot be determined, from the~~ ordinary high water mark as surveyed in the field. In braided channels and alluvial fans, the ~~top of the bank or~~ ordinary high water mark shall be determined so as to include the entire stream feature. Except as otherwise permitted under this chapter, stream buffers shall be retained in a natural, unaltered condition.

The following standard buffer widths shall be required, unless modified and approved in accordance with the provisions of this chapter:

A. Type S streams shall have buffers consistent with LMC Chapter 17.20 (Shoreline Master Program), or a 150-foot buffer if no buffer is specified by LMC Chapter 17.20.

~~A~~B. ~~Category I~~Type F streams shall have a 100-foot buffer.

~~B~~C. ~~Category II~~Type Np streams shall have a 60-foot buffer.

~~C~~D. ~~Category III~~Type Ns streams shall have a 35-foot buffer. (Ord. 2598 § 2, 2005)

17.10.0~~6~~72 Stream report – Requirements

A. Preparation by qualified professional**.** If required by the director, the applicant shall submit a stream report prepared by a qualified professional as defined herein.

B. Area Addressed in Critical Area Report. The following areas shall be addressed in a critical area report for streams:

1. The project area of the proposed activity;

2. All streams and recommended buffers within 2~~2~~500 feet of the project area; and

3. All shoreline areas, water features, floodplains, and other critical areas, and related buffers within 200~~2~~25 feet of the project area. The location and extent of streams and other critical areas existing outside of the project area or subject parcel boundary may be shown in approximation as practical and necessary to provide an assessment of potential project effects.

C. Stream Analysis. In addition to the minimum required contents of LMC 17.10.040, Submittal requirements, a critical areas report for streams shall contain an analysis of the streams, including the following site- and proposal-related information at a minimum:

1. A written assessment and accompanying maps of the streams and buffers within 2~~2~~500 feet of the project area, including the following information at a minimum:

a. Stream locations showing the ordinary high water mark(s), and required buffers;

b. Stream type;

c. Vegetative, faunal, and hydrologic characteristics;

d. Soil and substrate conditions;

~~e. A discussion of watershed context and landscape position for stream areas;~~

f. A discussion of the water sources draining to the stream; and

g. A description of the proposed stormwater management plan for the development and consideration of impacts to drainage alterations.

The location, extent and analyses of streams not contiguous with the subject parcel existing outside of the immediate project area may be described in approximation as practical and necessary to provide an assessment of potential project effects and hydrologic/ecological connectivity to on-site streams, wetlands and other critical areas.

2. A discussion of measures, including avoidance, minimization, and mitigation, proposed to preserve existing streams and riparian corridors and restore any streams that were degraded prior to the current proposed land use activity.

3. A detailed description and functional assessment of the stream and stream buffer under existing conditions pertaining to the protection of stream functions, fish habitat and, in particular, potential anadromous fisheries;

4. A habitat and native vegetation conservation strategy that addresses methods to protect and enhance on-site habitat and functions.

5. Proposed mitigation, if needed, including a written assessment and accompanying scale maps / drawings of the impacts and mitigation site and adjacent areas consistent with LMC 17.10.065.

D. Unless otherwise provided, a stream report may be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the director. A stream report may also be combined with a wetland report for sites that contain both critical areas.

17.10.0~~6~~73 Stream alteration allowed.

Alteration of natural watercourses and streams shall be avoided, if possible. If unavoidable, the director may approve alteration of natural watercourses and streams under the following circumstances:

~~A. All Category I~~Type F ~~streams shall be preserved. The city may only allow alteration of Category I~~Type F ~~streams when approved under LMC 17.10.046~~8 ~~and 17.10.047~~9~~.~~

~~B. The city may allow alteration of Category II~~Type Np ~~and/or~~ Type Ns~~Category III~~ ~~streams when approved under LMC 17.10.046~~8 ~~and 17.10.047~~49~~, or the director may approve alteration of such streams under the following circumstances:~~

A. ~~1.~~ There is no feasible and reasonable alternative to making the alteration; and

B. ~~2.~~ Alteration will not result in a loss of ~~preserve, improve or protect the~~any functions of the stream system (including habitat, water quality, erosion, etc…); or ~~and~~

C. Such alteration will be a beneficial restoration project.

~~3. When the applicant can demonstrate that the alteration or rerouting maintains or enhances the functional values of the stream in terms of water quality, erosion control, and/or fish and wildlife habitat. (Ord. 2598 § 2, 2005)~~

17.10.0~~6~~74 Stream alteration criteria.

Whenever stream alteration is proposed, the applicant shall prepare a mitigation plan, shall follow the mitigation sequencing requirements of LMC 17.10.041, and shall be subject to the following requirements:

A. Each proposal shall be designed so as to minimize overall stream or buffer alteration to the greatest extent reasonably possible; and

B. Construction techniques and field marking of areas to be disturbed shall be approved by the city prior to site disturbance to ensure minimal encroachment; and

C. When stream relocation ~~or compensation~~ is allowed, the city shall require that the stream relocation be completed and functioning prior to allowing the existing stream to be filled or altered; and

D. Additionally, when approving a stream alteration, the city may require:

1. An area larger than the altered portion of the stream and its buffer be provided as compensation for destruction of the functions of the altered stream and buffer and to assure that such functional values are replaced; and/or

2. Development activities be limited to specific months in order to minimize impacts on water quality and wildlife habitat; and/or

3. The city may apply additional conditions or restrictions, or require specific construction techniques in order to minimize impacts to stream systems and their buffers. (Ord. 2598 § 2, 2005)

17.10.0~~6~~75 Stream mitigation plan.

A mitigation plan shall be approved by the city prior to the issuance of any permits for development activity ~~occurring on a lot upon~~ which proposes stream and/or buffer alteration, reduction, averaging, restoration, creation or enhancement ~~is allowed~~. The mitigation plan shall:

A. Be prepared by a qualified professional using accepted methodologies; and

B. Include a baseline study that quantifies the existing functional values of the system, as well as functional values that may be lost, and the stream's functional values after mitigation; and

C. Specify how functional values will be replaced; and

D. Specify when mitigation will occur relative to project construction; and

E. Specify any requirements or permits required by other agencies, and the status of those permits; and

F. Include provisions for adequate monitoring to ensure success of the mitigation plan. The monitoring plan shall outline the approach for monitoring construction of the mitigation project and for assessment of the completed project, and shall include a schedule. A monitoring report shall be submitted annually for five years to the department unless a more frequent time period is required as a condition of the permit, and shall document successes, problems and contingency actions of the mitigation project. Monitoring activities may include, but are not limited to:

1. Establishing vegetation plots to track changes in plant species composition and density over time;

2. Measuring base flow rates and stormwater runoff to model and evaluate hydrologic predictions;

3. Sampling fish and wildlife populations to determine habitat utilization, species abundance and diversity; and

4. Sampling surface and subsurface waters to determine pollutant loading, and changes from the natural variability of background conditions; and

G. Include a contingency plan specifying what corrective actions will be taken should the mitigation not be successful; and

H. Include provisions for an assurance device, which may include a bond, to assure that work is completed in accordance with the mitigation plan, and to assure that restoration or rehabilitation is performed in accordance with the contingency plan if mitigation fails within five years of implementation. (Ord. 2598 § 2, 2005)

~~**17.10.0675 CulvertingStream crossing structures.**~~

~~A. Culverting~~ Stream crossing ~~structures within a stream shall only be permitted when necessary to provide access to a lot when no other feasible means of access exists.~~

~~B. Use of common access points shall be required for abutting lots which have no other feasible means of access.~~ Stream crossing structures~~Culverting shall be limited to the minimum number of stream crossings required to permit reasonable access.~~

~~C. For~~ all stream types, ~~stream crossings shall be designed according to the 2013 Water Crossing Design Guidelines as established by Washington Department of Fish & Wildlife. (Ord. 2598 § 2, 2005)Category I streams, and Category II streams with the presence of salmonids, only open bottom, or box culverts shall be permitted. When feasible, the use of open bottom, box culverts shall be required on all other Category II, and Category III streams. (Ord. 2598 § 2, 2005)~~

17.10.074 Increased stream buffer width.

The Director may increase the standard buffer width required for the category of stream ~~may be increased~~ up to fifty~~50~~ percent (50%) when necessary to protect streams when the stream is particularly sensitive to disturbance, or the development poses unusual impacts. Circumstances which may require buffers beyond minimum requirements include, but are not limited to:

A. The section of stream affected by the development proposal, and/or the adjacent riparian corridor contains essential habitat; or

B. The land adjacent to the stream and its associated buffer is classified as a geologically hazardous or unstable area; or

C. The riparian corridor provides a significant source of water, provides superior shading of stream waters or contributes organic material important to stream habitat areas; or

D. A trail or utility corridor is proposed within the buffer; or

E. A drainage improvement or water quality feature, such as a grass-lined swale, is proposed within the buffer; or

F. There has previously been substantial alteration of the adjacent buffer, and an increased buffer is necessary to improve the functions and values of the buffer; or

G. When the minimum buffer for a stream extends into an area with a slope of greater than 25 percent, the buffer shall be the greater of:

1. The minimum buffer for that particular stream type; or

2. Twenty-five feet beyond the point where the slope becomes 25 percent or less. (Ord. 2598 § 2, 2005)

17.10.075 Decreased stream buffer width.

~~Any stream which is restored, relocated, replaced or enhanced because of stream alterations shall have at least the standard buffer width required for the class of stream involved.~~ Except for streams which were approved for alteration by this chapter, ~~For other development proposals besides those for stream mitigation areas,~~ the director may reduce the standard stream buffer widths on a case-by-case basis where the applicant demonstrates that:

A. The buffer is currently, or will become extensively vegetated, has less than a 15 percent slope, and that no adverse impact to the stream will result from the proposed reduction; and

B. The proposal includes a buffer enhancement plan (if necessary) using native vegetation which substantiates that an enhanced buffer will improve the functional values of the buffer to provide additional protection of the stream; and

C. A decreased buffer shall not result in buffer widths less than:

1. ~~Category I~~Type F streams:	75 feet
2. ~~Category II~~Type Np streams:	45 feet
3. ~~Category III~~Type Ns streams:	25 feet

D. When a reduced buffer width is allowed, a mitigation, monitoring and contingency plan consistent with the provisions of LMC 17.10.0632, 17.10.0643, 17.10.0654, 17.10.12011 and 17.10.13025 (as applicable) shall be required by the city. (Ord. 2598 § 2, 2005)

17.10.076 Averaging of stream buffer widths.

~~Standard s~~Stream buffer widths may be modified by averaging buffer widths. Buffer width averaging will be allowed only where the applicant can demonstrate that:

A. The total area contained within the stream buffer after averaging is no less than that contained within the approved buffer prior to averaging; and

B~~D~~. Averaging is necessary to avoid an extraordinary hardship to the applicant ~~caused by~~as a result of circumstances peculiar to the property; and

C~~E~~. The averaged buffer, at its narrowest point, shall not result in a buffer width less than ~~three-fourths~~seventy-five percent (75%) of the buffer width allowed for that proposal; and

D~~F~~. A mitigation and enhancement plan is prepared for the proposal; and

E~~G~~. Width averaging will not adversely impact the stream functional values. (Ord. 2598 § 2, 2005)

17.10.077 Riparian wetland.

Any stream adjoined by a riparian wetland shall have the buffer which applies to the wetland, unless the stream buffer requirement is more protective, in which case the stream buffer requirement shall apply. (Ord. 2598 § 2, 2005)

17.10.078 Building setback line – Streams.

A building setback line of 15 feet shall be required from the edge of any stream buffers. Following construction, this helps to prevent encroachment into the buffer while maintaining such structures. Fences and minor structural intrusions as defined in LMC 21.02.105 into the area may be allowed if the department determines that such intrusions will not negatively impact the stream. The setback shall be identified on the site plan approved by the city. (Ord. 2598 § 2, 2005)

17.10.080 Fish and wildlife priority habitat.

The following environmentally critical areas may be considered priority habitat for the protection of fish and wildlife in the city:

~~A. Category I and Category II wetlands;~~

~~B. Category I streams;~~

~~C. Category II streams if used by salmonids;~~

~~D. Upland areas if one or more of the following criteria are met:~~

~~1. The presence of essential habitat; or~~

~~2. Areas contiguous with large blocks of distinct habitat extending outside of the city limits or providing a travel corridor to a significant resource; or~~

~~3. Areas adjacent to or contiguous with Category I wetlands which enhance the value of those wetlands for wildlife. (Ord. 2598 § 2, 2005)~~A. Category I and Category II wetlands;

B. Type F streams

C. Upland areas if one or more of the following criteria are met:

1. The presence of essential habitat; or

2. Areas contiguous with large blocks of distinct habitat extending outside of the city limits or providing a travel corridor to a significant resource; or

3. Areas adjacent to or contiguous with Category I wetlands which enhance the value of those wetlands for wildlife.

D. Areas where endangered, threatened, and sensitive species have a primary association;

E. Habitats and species of local importance, as determined by the City of Lynnwood;

F. Natural occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat;

(Ord. 2598 § 2, 2005)

17.10.081 ~~Wildlife habitat assessment~~Fish and wildlife priority habitat assessment.

For ~~If~~ a development ~~is~~ proposed within or adjacent to an identified "priority habitat area," the applicant shall provide a ~~wildlife~~ habitat assessment prepared by a qualified professional. The assessment shall include an inventory of the priority species, an evaluation of the habitat, and recommendations for protection of the habitat and species of concern ~~shall be provided~~. The city may ask appropriate resource agencies to review and comment on the proposal's potential impact on habitat and species. Based upon recommendations from resource agencies and qualified professionals, the city may attach conditions to land use and development permits to prevent, minimize, or mitigate impacts to the habitat area.

In addition to the general critical areas report requirements of LMC 17.10.040, critical area reports for fish and wildlife priority habitat areas shall meet the requirements of this section. Critical areas reports for two or more types of critical areas shall meet the report requirements for each relevant type of critical area.

A. Preparation by a Qualified Professional. A critical areas report for a fish and wildlife priority habitat area shall be prepared by a qualified professional who is a biologist with experience preparing reports for the relevant type of habitat.

B. Areas Addressed in Critical Areas Report. The following areas shall be addressed in a critical areas report for fish and wildlife priority habitat areas:

1. The project area of the proposed activity;

2. All fish and wildlife habitat conservation areas and recommended buffers within 2~~25~~00 feet of the project area;

3. All shoreline areas, floodplains, other critical areas, and related buffers within 2~~25~~00 feet of the project area; and

4. A discussion of the efforts to avoid and minimize potential effects to these resources and the implementation of mitigation/enhancement measures as required.

C. Habitat Assessment. A habitat assessment is an investigation of the project area to evaluate the potential presence or absence of designated critical fish or wildlife species or habitat. A critical areas report for a fish and wildlife priority habitat area shall contain an assessment of habitats, including the following site~~-~~ and proposal-related information at a minimum:

1. Detailed description of vegetation on and adjacent to the project area and its associated buffer;

2. Identification of any species of local importance, priority species, or endangered, threatened, sensitive, or candidate species that have a primary association with habitat on or adjacent to the project area, and assessment of potential project impacts to the use of the site by the species;

3. A discussion of any federal, state, or local special management recommendations, including Washington Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area. (Ord. 2598 § 2, 2005)

17.10.090 Geologically hazardous areas – Identification.

The following are classified as potentially geologically hazardous areas:

A. Geologically hazardous areas are those areas that are naturally susceptible to geologic events such as landslides, seismic activity and severe erosion. Areas susceptible to one or more of the following types of hazards shall be designated as geologically hazardous areas:

1. Landslide Hazard Areas: Areas with slopes steeper than 40 percent. Areas with slopes between 15 to 40 percent that are underlain by soils largely consisting of silt and clay. Areas with slopes steeper than 15 percent with zones of emergent water such as groundwater seepage or springs. Areas of landslide deposits regardless of slope.

2. Erosion Hazard Areas: Erosion hazards areas are lands underlain by soils identified by the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) as having "severe" or "very severe" erosion hazards.

3. Seismic Hazard Areas: Seismic hazard areas are lands that are underlain by soft or loose saturated soils that are subject to liquefaction settlement or spreading during earthquake induced ground shaking. ~~A. Naturally occurring slopes of 40 percent or more;~~

B. Other areas which the city has ~~reaso~~reason nn to believe are geologically unstable due to factors such as landslide, seismic or erosion hazards~~ as identified on an Environmentally Sensitive Areas Map~~. (Ord. 2598 § 2, 2005)

17.10.091 Geologically hazardous areas – Setbacks and Buffers.

Development proposals on lots which are designated as or which the city has reason to believe are geologically unstable or hazardous shall be set back consistent with the following criteria:

A. Landslide Hazard Areas and Erosion Hazard Areas setback: Except as allowed by LMC 17.10.092, a minimum of 25 feet from top, toe and sides of such areas ~~(as applicable)~~. The setback requirement may be increased by the City when necessary to protect public health, safety and welfare, based upon information contained in a geotechnical report. The size of the setback should be determined by the director based on review and consideration of recommendations provided in a geotechnical report prepared by a qualified professional.

B. Landslide Hazard Areas and Erosion Hazard Areas buffer: A buffer may be established with specific requirements and limitations, including but not limited to, drainage, grading, irrigation, and vegetation. Buffer requirements shall be determined by the director based on review and consideration of recommendations provided in the geotechnical report prepared by a qualified professional.

C. Seismic Hazard Areas: Activities proposed to be located in seismic hazard areas shall not be required to establish setbacks or buffers. Activities within seismic hazard areas shall meet the standards of LMC Title 16 (Building) and Title 21 (Zoning).

(Ord. 2598 § 2, 2005)

17.10.092 Geologically hazardous areas – Alteration allowed.

Unless associated with a stream or wetland, the city may allow alteration of an area identified as a potentially geologically hazardous area, or its setback. In order to perform such alteration, the applicant shall submit to the department a geotechnical report, containing all elements described in LMC 17.10.094, and must demonstrate:

A. The proposed development will not create a hazard to the subject property, surrounding properties, or rights-of-way, nor will it cause severe erosion, or deposit excessive sedimentation to off-site properties or bodies of water; and

B. The proposed method of construction will reduce erosion, landslide, and seismic hazard potential, and will improve or not adversely affect the stability of slopes; and

C. The proposal uses construction techniques which minimize disruption of existing topography and natural vegetation; and

D. The proposal is consistent with the purposes and provisions of this chapter. (Ord. 2598 § 2, 2005)

17.10.093 Geologically hazardous areas – Alteration conditions.

Alteration allowed by this chapter shall be subject to the following requirements:

A. All proposed development be designed and located so as to require the minimum amount of modification to areas of potential geologic instability; and

B. All impacts identified in the geotechnical report be adequately mitigated so as to render the site containing a potential geologic hazard as safe as one not containing such a potential hazard; and

C. As a condition of any approval of development containing a geologically hazardous area or its required setbacks, the city may also require that:

1. The applicant's geotechnical consultant be present on the site during clearing, grading, filling and construction activities which may affect geological hazard or unstable areas, and provide the city with certification that the construction is in compliance with his/her recommendations and has met with his/her approval; and

2. Trees and groundcover be retained and additional vegetation or other appropriate soil stabilizing structures and materials be provided.

3. All development proposals on sites containing potential erosion hazard areas shall include temporary erosion and sediment control plans consistent with adopted surface water design manual and a vegetation management and restoration plan to ensure permanent stabilization of the site. (Ord. 2598 § 2, 2005)

17.10.094 Geotechnical report content requirements.

Geotechnical reports shall be prepared and stamped by a geotechnical engineer or engineering geologist licensed by the State of Washington, as appropriate. ~~Geotechnical reports shall be stamped and signed by an engineer.~~ Geotechnical reports shall be subject to independent (third party) review when determined necessary by the director. Based on the characteristics of the site, the director may require any or all of the following items to be addressed in the geotechnical report:

A. A site development plan drawn to scale which shows the boundary lines and dimensions of the subject property, the geologically hazardous areas, the location, size, and type of any existing or proposed structures, impervious surfaces, wells, drain fields, drain field reserve areas, roads, easements, and utilities located on site; and

B. A site map identifying the location of springs, seeps, or other surface expressions of ground water, ~~and~~ the location of surface water or evidence of seasonal surface water runoff or ground water, and the location of any subsurface explorations such as test pits or borings; and

C. A discussion of the geological properties of the soils, including any fill, sediment layers, and/or rocks on the subject property and adjacent properties and their effect on the stability of the slope; and

D. The extent and type of vegetative cover prior to development activity or site disturbance; and

E. The proposed method of drainage and locations of all existing and proposed surface and subsurface drainage facilities and patterns, and the locations and methods for erosion control; and

F. A description of the soils in accordance with the Unified Soil Classification System; and

G. Identification of all existing fill areas; and

~~H. Information demonstrating compliance with all applicable; and~~

~~I~~H. Evidence showing faults, significant geologic contacts, landslides, or downslope soil movement on the subject property and adjacent properties; and

~~J~~I. Slope stability analyses in areas with potential risk of landsliding; and

J~~K~~. Site seismic response evaluation in areas with the potential risk of soil liquefaction (potential seismic hazard areas); and

K~~L~~. A vegetation management and restoration plan, or other means necessary for maintaining long-term stability of slopes. (Ord. 2598 § 2, 2005)

17.10.100 Frequently flooded areas.

Flood hazard areas are those areas of Lynnwood subject to inundation by the one percent (1%) chance annual flood, defined as areas of special flood hazard by LMC 16.46. Areas of special flood hazard are identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for Snohomish County, Washington and Incorporated Areas," dated November 9, 1999, as amended, with accompanying flood insurance rate maps, as amended. Activities in frequently flooded areas must be in compliance with floodplain regulations as described in LMC 16.46.

~~17.10.100 Buffer credit.~~

~~Where buffers around critical areas are required by this chapter, the number of allowable lots or potential dwelling units in residential development proposals, and the amount of lot coverage in nonresidential proposals, may be increased as stated in subsections (A) and (B) of this section. This buffer credit is designed to provide incentives for the preservation of critical areas, flexibility in design, and consistent treatment of different types of development proposals.~~

~~A. The following buffer credit calculations shall apply to all residential zones:~~

~~1. Single-Family Residential and Duplex Residential Zones with Minimum Lot Standards.~~

$$\frac{\text{total amount of net development area}}{\text{minimum zoned lot size}} + \text{total amount of area in buffer} = \text{number of allowable lots}$$

~~2. Multifamily Residential, Excluding the Duplex Residential Zone.~~

$$\frac{\text{total amount of net development area}}{\text{maximum zoned dwelling units}} + \text{total amount of area in buffer} = \text{number of allowable dwelling units}$$

~~3. This credit shall be subject to the following:~~

~~a. Only that buffer area located within areas required by the city of Lynnwood to be dedicated or reserved as separate tracts shall be counted.~~

~~b. Use of this credit shall not waive nor modify any other required provision of the Lynnwood Municipal Code including, but not limited to, zoning or subdivision regulations or standards, except as noted in subsection (A)(3)(c) of this section.~~

~~c. To the extent that application of the buffer credit may result in lot sizes less than the minimum allowed in the zone in which the proposal is located:~~

~~i. In no case shall such lot sizes be less than 90 percent of the minimum allowed lot size, except in the RS-7 zone, which shall be no less than 95 percent; and~~

~~ii. In order to keep the relationship between lot width and area reasonable, lot width may be up to, but not more than, five feet narrower than the minimum allowed.~~

~~B. The following buffer credit shall apply to all nonresidential-zoned areas:~~

~~In nonresidential-zoned areas, the amount of the site that may be covered under the zoning code shall be calculated by applying the maximum allowed lot coverage to the combination of the net development area and the area in buffers.~~

~~Use of this credit shall not waive or modify any other required provision of the Lynnwood Municipal Code including, but not limited to, zoning or subdivision regulations or standards. (Ord. 2622 § 11, 2006; Ord. 2598 § 2, 2005)~~

17.10.110 Critical aquifer recharge areas - Identification

A. Critical aquifer recharge areas (CARAs) designation: CARAs are those areas with a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(2). CARAs have prevailing geologic conditions associated with infiltration rates that create a high potential for contamination of ground water resources or contribute significantly to the replenishment of ground water. In the City of Lynnwood and vicinity, these areas include the following:

1. Wellhead Protection Areas: Wellhead protection areas may be defined by the boundaries of the ten (10) year time of ground water travel or boundaries established using alternate criteria approved by the Washington State Department of Health in those settings where ground water time of travel is not a reasonable delineation criterion, in accordance with WAC 246-290-135.

2. Susceptible Ground Water Management Areas: Susceptible ground water management areas are areas that have been designated as moderately or highly vulnerable or susceptible in an adopted ground water management program developed pursuant to WAC 173-100,

B. Mapping of CARAs - The approximate location and extent of critical aquifer recharge areas are shown on the City critical areas inventory map for CARAs.

17.10.111 Critical aquifer recharge areas – Activities allowed

The following activities are allowed in critical aquifer recharge areas pursuant to this Section, and do not require submission of a critical area report:

A. Construction of structures and improvements, including additions, resulting in less than five percent (5%) or 2,500 square feet (whichever is greater) total site impervious surface area that does not result in a change of use or increase the use of a hazardous substance.

B. Development and improvement of parks, recreation facilities, open space, or conservation areas resulting in less than five percent (5%) total site impervious surface area that do not increase the use of a hazardous substance.

17.10.112 Critical aquifer recharge areas – Additional reporting requirements

In addition to the general critical area report requirements of Section 17.10.040, critical area reports for critical aquifer recharge areas must meet the requirements of this Section. Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area:

A. Preparation by a Qualified Professional. An aquifer recharge area critical area report shall be prepared by a qualified professional who is a hydrogeologist, geologist, or engineer, who is licensed in the state of Washington and has experience in preparing hydrogeologic assessments.

B. Hydrogeologic Assessment. For all proposed activities to be located in a critical aquifer recharge area, a critical area report shall contain a level one (1) hydrogeological assessment. A level two (2) hydrogeologic assessment shall be required for any of the following proposed activities:

1. Activities that result in five percent (5%) or more impervious site area;

2. Activities that divert, alter, or reduce the flow of surface or ground waters, or otherwise reduce the recharging of the aquifer;

3. The use of hazardous substances, other than household chemicals used according to the directions specified on the packaging for domestic applications;

4. The use of injection wells proposed as part of a stormwater management system;

5. Any other activity determined by the [director] likely to have an adverse impact on ground water quality or quantity or on the recharge of the aquifer.

C. Level One Hydrogeologic Assessment. A level one hydrogeologic assessment shall include the following site-and proposal-related information at a minimum:

1. Available information regarding geologic and hydrogeologic characteristics of the site including the surface location of all critical aquifer recharge areas located on site or immediately adjacent to the site, and permeability of the unsaturated zone;

2. Ground water depth, flow direction, and gradient based on available information;

3. Currently available data on wells and springs within 1,300 feet of the project area;

4. Location of other critical areas, including surface waters, within 1,300 feet of the project area;

5. Available historic water quality data for the area to be affected by the proposed activity; and

6. Best management practices proposed to be utilized.

D. Level Two Hydrogeologic Assessment. A level two hydrogeologic assessment shall include the following site-and proposal-related information at a minimum, in addition to the requirements for a level one hydrogeological assessment:

1. Historic water quality data for the area to be affected by the proposed activity compiled for at least the previous five (5) year period;

2. Ground water monitoring plan provisions;

3. Discussion of the effects of the proposed project on the ground water quality and quantity, including:

a. Predictive evaluation of ground water withdrawal effects on nearby wells and surface water features; and

b. Predictive evaluation of contaminant transport based on potential releases to ground water.

4. A spill plan that identifies equipment and/or structures that could fail, resulting in an impact. Spill plans shall include provisions for regular inspection, repair, and replacement of structures and equipment that could fail.

17.10.113 Critical aquifer recharge areas – Performance standards, specific uses

A. Storage tanks. All storage tanks proposed to be located in a critical aquifer recharge area must comply with local building code requirements and must conform to the following requirements:

1. Underground tanks: All new underground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to prevent releases due to corrosion or structural failure for the operational life of the tank; be protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed to include a secondary containment system to prevent the release or threatened release of any stored substances; and use material in the construction or lining of the tank that is compatible with the substance to be stored.

2. Above ground tanks: All new above ground storage facilities proposed for use in the storage of hazardous substances or hazardous wastes shall be designed and constructed so as to not allow the release of a hazardous substance to the ground; have a primary containment area enclosing or underlying the tank or part thereof ground waters, or surface waters; and have a secondary containment system either built into the tank structure or a dike system built outside the tank for all tanks.

B. Vehicle Repair and Servicing.

1. Vehicle repair and servicing must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment should leaks occur.

2. No dry wells shall be allowed in critical aquifer recharge areas on sites used for vehicle repair and servicing. Dry wells existing on the site prior to facility establishment must be abandoned using techniques approved by the state Department of Ecology prior to commencement of the proposed activity.

C. Residential Use of Pesticides and Nutrients. Application of household pesticides, herbicides, and fertilizers shall not exceed times and rates specified on the packaging.

D. State and Federal Regulations. All of the above listed uses, and other uses where state and federal regulations apply, shall be conditioned as necessary to protect critical aquifer recharge areas in accordance with the applicable state and federal regulation. In addition, any water reuse projects for reclaimed water must be in accordance with the adopted water or sewer comprehensive plans that have been approved by the state departments of Ecology and Health, and must meet the ground water recharge criteria given in Chapter 90.46.080(1) and Chapter 90.46.010(10) RCW. The state Department of Ecology may establish additional discharge limits in accordance with Chapter 90.46.080(2) RCW.

17.10.114 Critical aquifer recharge areas – Prohibited Uses

The following activities and uses are prohibited in critical aquifer recharge areas:

A. Landfills, including hazardous or dangerous waste, municipal solid waste, special waste, woodwaste, and inert and demolition waste landfills;

B. Wood Treatment Facilities - treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade);

C. Storage, Processing, or Disposal of Radioactive Substances;

D. Other Prohibited Uses or Activities

1. Activities that would significantly reduce the recharge to aquifers currently or potentially used as a potable water source;

2. Activities that would significantly reduce the recharge to aquifers that are a source of significant baseflow to a regulated stream; and

3. Activities that are not connected to an available sanitary sewer system, prohibited from critical aquifer recharge areas associated with sole source aquifers

~~**17.10.110 Low-impact use of buffer - Allowed.**~~

~~Installation of low-impact permeable pedestrian trails and viewing platforms in critical areas and their buffers may be approved by the director. These uses must be mitigated for according to the applicable terms and conditions detailed in this chapter, and according to the type of critical area being affected. (Ord. 2598 § 2, 2005)~~

17.10.12011 Critical areas signs, monuments and fencing.

A. The boundary of a critical area will be delineated by survey stakes, and/or tape at the time of the completion of the critical area report. The buffer will be established as measured from that boundary. During construction, the buffer edge will be delineated and identified using plastic tape and ~~silt~~ construction fence, or any other effective measure to prohibit construction activities from encroaching into the critical area and its associated buffer. Those measures will be maintained until completion of the project.

B. Upon completion of the construction of the project, the boundary of the critical area and/or buffer will be designated with permanent signs, monuments and fencing, the design and spacing of which will be left to the discretion of the ~~public works~~ director.

C. All critical areas and their buffers which have been protected through the application of this chapter, shall be permanently protected by designating them as native growth protection areas (NGPAs). (Ord. 2598 § 2, 2005)

17.10.12500 Appeals.

Any person who objects to the decision of the city under this chapter may file an appeal. An appeal of a Process III or other administrative decision is appealable to the hearing examiner using the procedure under Process II (LMC 1.35.200 through 1.35.260). An appeal of a Process I, II, or other hearing examiner decision on a land use permit is appealable to superior court using the procedure under Chapter 36.70C RCW. (Ord. 2957 § 15, 2012; Ord. 2622 § 12, 2006; Ord. 2598 § 2, 2005)

17.10.13025 Notice, performance securities, bonds, administration.

A. Notice. The owner of any property found to contain certain critical areas or buffers, on which a development project is ~~submitted~~approved, shall file for record with Snohomish County a notice approved by the city. Such notice shall identify in the public record the presence of any critical areas or buffers, the application of this chapter to the property, and state that limitations on actions in or affecting such areas may exist.

~~The owner shall submit proof to the director that the notice has been filed for record with Snohomish County before the city shall approve any development proposal for such site.~~ The notice shall run with the land and failure to provide such notice to any purchaser prior to transferring any interest in the property shall be a violation of this chapter.

B. Performance Securities. The director may require the applicant of a development proposal to post a cash performance bond or other acceptable security in a form and amount determined sufficient to guarantee satisfactory workmanship, materials, and performance of structures and improvements allowed or required by application of this chapter. The director shall release the security upon determining that all requirements established by this chapter have been satisfactorily completed.

C. Performance, Maintenance, and ~~/~~Monitoring Bonds. The director may require the applicant whose development proposal is subject to a mitigation plan to post a performance, maintenance and ~~/~~monitoring bond or other security instrument in a form and amount determined sufficient to guarantee satisfactory performance for ~~a~~ the period of time of the maintenance and monitoring period~~up to five years~~. The bond amount shall be no less than 125 percent of the estimated cost of the mitigation project including any plant materials, soil amendments, temporary irrigation, signs and monuments, and monitoring proposed. The duration of maintenance and ~~/~~monitoring obligations shall be no less than five years, unless determined otherwise by the director after consideration of the nature of the proposed mitigation and the likelihood and expense of mitigation failures. The director shall release the security upon determining that the mitigation plan has achieved satisfactory success. The performance standards of the mitigation plan shall be agreed upon by the director and the applicant during the review process and shall be specified in the mitigation plan. (Ord. 2598 § 2, 2005)

17.10.140~~30~~ Unauthorized alterations.

When environmentally critical areas and/or their associated buffers have been illegally altered, the city may require them to be restored to their unaltered condition, and subject them to all terms and conditions of this chapter, including but not limited to increasing the area of the critical area and buffer as compensation for the alteration. (Ord. 2598 § 2, 2005)

17.10.145~~31~~ Enforcement, violations and penalties.

It shall be unlawful for any person, firm, or corporation to violate any provision of this chapter. The director shall have the authority to enforce any and all provisions of this chapter, by proceeding with the following actions in progressive severity, except in cases where a delay would result in further loss and/or degradation of critical areas:

A. Stop Work Orders. For any action which appears to be in violation of this chapter, the director shall have the authority to order the party in question to immediately stop all work until such time as the director determines that the action is in compliance with the terms and conditions of this chapter.

B. Civil Remedies and Penalties. Any person, firm, corporation, or association or any agent thereof who violates any of the provisions of this chapter may be subject to the following civil penalties:

1. The city may issue a notice and order under Chapter 1.40 LMC stating any person, firm, corporation or association or any agent thereof who violates any of the provisions of this chapter shall be liable for all damages to public or private property arising from such violation, including the cost of restoring the affected area to an equivalent or improved condition prior to the violation, and set a reasonable amount of time for compliance.

2. The city may require restoration. Restoration may include but is not limited to, the replacement of all improperly removed vegetation with species similar to those which were removed or other approved species such that the biological and habitat values will be replaced or improved to the greatest extent reasonably possible. A study by a qualified expert(s) shall be conducted to determine the conditions which were likely to exist prior to the illegal alteration. Restoration may also include installation and maintenance of erosion control measures.

3. In addition to requiring restoration, the city may assess civil penalties as provided in LMC 1.01.085.

4. The city may require a maintenance bond to insure compliance with the city's order, subject to the bonding procedure established in LMC 17.10.130~~25~~.

5. If the order requiring restoration is not complied with, then the property owner shall be subject to a civil fine of $~~1~~500.00 per day.

6. If the noncompliance continues for more than ~~3~~10 days, civil penalties shall be increased to $~~5~~1,000.00 per day up to a maximum of $~~10~~75,000. Fines shall stop on the day that compliance with the order begins, pending successful completion with the compliance order.

7. Any person who objects to a final order of the city under this section may file an appeal to the hearing examiner using the procedure under Process II in LMC 1.35.200 through 1.35.260.

8. Any unpaid civil fines may become a lien against the property, and the city may record said lien. (Ord. 2598 § 2, 2005)

17.10.1~~5040~~ Severability.

If any paragraph, clause, sentence, section or part of this chapter or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any part thereof to any other person or circumstances and to this end the provisions of each paragraph, clause, sentence, section or part of this chapter are hereby declared to be severable. (Ord. 2598 § 2, 2005)